IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1746 OF 2006

Tatyaji Yashwant Patil. ...Applicant
V/s.
Director, Jotirling Finance
& Investment Ltd. & Anr. ...Respondents

Shri Milind Deshmukh for Applicant.
Shri R.Y. Mirza, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MAY 2, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

2. The applicant is seeking modification of the order dated 10th March, 2006 passed by the Learned J.M.F.C. Kolhapur. By the said order dated 18th April, 2006, the District Court admitted the appeal and did not suspend the sentence under Section 389 of Cr.P.C.

3. The Additional District Judge, Kolhapur, refused to grant stay to the Judgment and Order of the Magistrate dated 10th March, 2006 though the appeal against the said order was admitted. The 5th A.A.D.J.,

Kolhapur observed that the Magistrate had sentenced the accused to suffer imprisonment for a term by six months and also has directed the accused to pay Rs.50,000/- as compensation within one month from the date of the order and in default, to suffer simple imprisonment for one month. The A.A.D.J., Kolhapur observed that since the Judgment and the sentence was awarded by the lower Court on 10th March, 2006, the accused had not deposited the amount of compensation as ordered by the trial Court. The Sessions Court, therefore, did not suspend the sentence under Section 389 of the Cr.P.C. by its order dated 18th April, 2006.

4. Counsel for the applicant submits that the applicant is unable to deposit the compensation amount on account of financial difficulty.

5. In my view, the appellate Court ought to have stayed the sentence and stayed the payment of compensation pending the final hearing of the appeal. The accused has been sentenced to undergo simple imprisonment for six months and if an amount of

Rs.50,000/- is not paid, the applicant will have to undergo the entire sentence during the pendency of the appeal and the appeal itself would become infractuous.

6. Therefore, the application is allowed. The condition imposed by the Learned Magistrate of payment of compensation of Rs.50,000/- is stayed pending the hearing of the appeal before the A.A.D.J., Kolhapur. Hearing of the appeal is expedited. The sentence imposed by the J.M.F.C., Kolhapur is also stayed pending the appeal.

. Application is disposed of.

(V.M. Kanade, J.)